

Rpt. of Commission "to study (then) present Workmen's Comp. Act of Mo."
dated 3/2/31
1930-31

Report

Workmen's Comp.

To His Excellency,
Albert C. Ritchie, Governor of Maryland,
Annapolis, Maryland

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In December, 1930, you appointed a commission to study the present Workmen's Compensation Act of Maryland and make recommendations of any changes that might be made in the Act, taking into consideration the provisions in other States, the adequacy or inadequacy of the Law as it now exists, and also to endeavor to correct any defects that may be in the present Law.

This commission consisted of the following:

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| Mr. Fred Blaser | Mr. Clinton S. Hancock |
| Mr. Henry F. Broening | Mr. L. Manuel Hendler, <i>Chair</i> |
| Mr. John S. Brophy | Mr. Austin J. Lilly |
| Mr. Robert H. Carr | Mr. Thomas Peel |
| Mr. James E. Green | Mr. H. S. Shaeffer |

On December 30, 1930 a meeting of this commission was called by you at your office in the Union Trust Building, in Baltimore, Maryland, and Mr. L. Manuel Hendler was selected to act as Chairman. A general discussion took place at this meeting and at the conclusion it was decided to appoint a committee of three to take up the matters to be considered, and report back to the commission at a later date. This committee, as appointed, consisted of Mr. Robert H. Carr, Chairman, Mr. Henry F. Broening, and Mr. Austin J. Lilly.

This committee, so appointed, held quite a number of meetings, to which various interested groups and individuals were invited, and given the privilege of expressing their views on such changes as were suggested, or might be suggested. At these meetings of the committee conditions at the present time were compared with those that existed in 1920, when the last changes of any importance were made in the Compensation Law. Suggestions were made covering both matters of administration and changes in the benefits to claimants. The approximate cost of changes of benefits was ascertained, approximately, and Laws of other States were carefully reviewed. At the conclusion of these meetings the committee made a report to your commission in three Sections. Section 1 outlined definite recommendations. Section 2 submitted proposals without recommendation one way or the other. Section 3 opposed the adoption of certain changes that had been, or were about to be introduced in the present General Assembly.

After receiving the report of the committee, the commission held three meetings, taking up this report, discussing each item contained therein, and considering additional matters that might have a tendency to improve the present Act.

This commission completed its meetings on March 2, 1931, and unanimously submit to you recommendations as follows:

1. LIMITATIONS. (a) That Section 39 of the Law be amended by providing, in addition to the present limitation therein, for an absolute limitation of one year after date of accident within which claim may be filed. Correlative amendment should be made to Section 64.

(b) That Section 54, which provides that the Commission shall have continuing jurisdiction, shall be amended to further provide that claims may not be reopened after the expiration of one year next following upon a final award of compensation.

2. COMPROMISE SETTLEMENTS. That Section 40 of the Act be amended, the effect of which will be to authorize the State Industrial Accident Commission, in the exercise of their discretion, to approve settlements by way of compromise, where the terms of settlement have been agreed upon by the interested parties.

Under the present Law, in order that a case may be finally settled by mutual compromise agreement, the parties usually consider it advisable to resort to an appeal to Court. This method has a tendency to delay the final adjustment of the case and adds additional expense, owing to the fact that a transcript of the record is written up and forwarded to the Court where the appeal has been taken. Furthermore, it is believed that the State Industrial Accident Commission, which is charged with the general administration of the Workmen's Compensation Act, should not be without authority in this important particular.

3. A PROVISION RELATING TO SUCCESSIVE DISABILITIES. That Section 36 of the Act be amended by the insertion, between the paragraph headed "Amputations" and the paragraph headed "Other Cases", of a provision under the terms of which - notwithstanding the provisions of Section 53 - an employee having a pre-existing permanent partial disability may waive, with his present or any subsequent employer, benefits for permanent total disability resulting from a subsequent thereupon the employee will be entitled only to compensation for the subsequently resulting disability considered separately and apart from the pre-existing disability. (A precedent satisfactory to your commission is found in Section 5364 of the Workmen's Compensation Law of the State of Connecticut).

This recommendation was made after considerable discussion and hearing the points raised by a representative interested in securing work for the partially blind, and a representative of the State in vocational rehabilitation. The reason this recommendation is made is that an employer who takes on as an employee anyone who has lost one member is faced with the possibility of having charged to his experience a full perma-

ment total disability at the maximum amount in case another member is lost while in his employ.

4. SPECIAL PROVISIONS FOR HERNIA CASES. That Section 36 be amended by inserting therein, immediately before the paragraph beginning with the word "Disfigurements", the following provisions relating to hernia:

In all claims wherein hernia is alleged to be the result of accidental injury arising out of and in the course of the employee's employment, compensation may be allowed only upon definite proof to the satisfaction of the Commission:

FIRST, That there was an injury resulting in hernia.

SECOND, That the hernia appeared suddenly.

THIRD, That it was accompanied by pain.

FOURTH, That the hernia immediately followed an injury.

FIFTH, That the hernia did not exist prior to the injury for which compensation is claimed.

SIXTH, That, anything in this Act respecting notice to the contrary notwithstanding, such injury was reported to the employer within forty-eight (48) hours next following upon its occurrence.

All hernia, inguinal, femoral or otherwise, so proven to be the result of an injury received in the course of and resulting from the employment, shall be treated in a surgical manner by radical operation. If death results from such operation, the death shall be considered as a result of the injury, and compensation paid in accordance with the provisions of Section 36. In non-fatal cases, time loss only shall be paid, unless it is shown by special examination that the injured employee has a permanent partial disability resulting from the operation. If so, compensation shall be paid in accordance with the provision of this Act, with reference to permanent partial disability.

In case the injured employee refuses to undergo the radical operation for the cure of the said hernia, he shall be allowed compensation for a period of seven and one-half ($7\frac{1}{2}$) weeks and if it be shown to the satisfaction of the Commission that because of age or previous physical condition it is considered unsafe for him to undergo such operation, such refusal may be excused by the Commission, in which event he shall be allowed compensation for the period of actual disability resulting from such hernia, not to exceed twenty-six (26) weeks, and in either event such payments shall be in lieu of all benefits for or on account of disability or death resulting from such injury.

5. APPROVAL OF FEES FOR LEGAL SERVICES. It is recommended that some change be made in Section 57 of the Act whereby the State Industrial Accident Commission would have the power to require the return of any excessive portion of a fee that had been charged for legal services without the approval of said Commission.
6. DIFFERENTIATION BETWEEN DISABILITY AND DISEASE. That provision be made by proper definition for excluding from compensation coverage that portion of disability due to a combination of disease and accident, which cannot be attributed solely to the accident.
7. INCREASE IN BENEFITS. An increase in maximum weekly disability benefits for all disabilities except permanent partial disabilities, from the present \$18.00 per week to \$20.00 per week.
8. REPEALING THE FIRST PARAGRAPH OF SECTION 56 OF CHAPTER 101, AND RE-ENACTING SAME TO READ AS FOLLOWS:

Any employer, employee, beneficiary or person feeling aggrieved by any decision of the Commission affecting his interests under this Article, may have the same reviewed by a proceeding in the nature of an appeal and initiated in the Circuit Court of the county or in the Common Law Courts of Baltimore City having jurisdiction over the place where the accident occurred or over the person appealing from such decision, and the Court shall, from the record made before the Commission (or upon any stipulation of the facts which may be agreed to and signed by the parties and filed with such appeal), determine whether the Commission has exceeded the powers granted it by the Article, and whether it has misconstrued the law and facts applicable in the case decided as disclosed by the record aforesaid or such stipulation. If the Court shall determine that the Commission has acted within its powers and has correctly construed the law and facts, the decision of the Commission shall be confirmed; otherwise it shall be reversed or modified. Upon the hearing of such an appeal the Court shall, upon motion of either party filed with the Clerk of the Court according to the practice in civil cases, submit to a jury any question of fact disclosed by such record or stipulation involved in such case. No such appeal shall be entertained unless notice of appeal shall have been served personally upon some member of the Commission within thirty days following the rendition of the decision appealed from. An appeal shall not be a stay. If the decision of the Commission shall be changed or modified, the practice prevailing in civil cases as to the payment of costs and the fees of medical and other witnesses shall apply. In all such appeals upon suggestion in writing, under oath, of either of the parties to said proceedings that such party cannot have a fair and impartial trial in the Court in which the same may be pending, the said Court shall order and direct the record of proceed-

ings in such appeal to be transmitted to some other of the Circuit Courts of the counties, or Common Law Courts of Baltimore City for trial. Appeal shall lie from the judgment of the Circuit Court of the county or the Common Law Courts of Baltimore City to the Court of Appeals as in other civil cases. All appeals under this Article shall have precedence over all cases except criminal cases.

9. PROVIDING FOR AUTOPSY. Where the cause of death is obscure or may be disputed, any interested party may require an autopsy at the expense of the person or persons requesting same, provided the widow or next of kin is given sufficient notice thereof so that she or they may have present at the autopsy a representative to look after the interests of the widow or next of kin.

10. PROVIDING FOR THE INCLUSION IN THE ACT OF POLICE AND CONSTABLES OF COUNTIES AND INCORPORATED TOWNS IN MARYLAND.

THE COMMISSION IS UNANIMOUSLY OPPOSED TO THE ADOPTION OF AMENDMENTS TO THE ACT;

- (a) the effect of which may be to encourage litigation and which will be to increase the cost of compensation, by authorizing claimants to retain counsel at the expense of Industry;
- (b) the effect of which will be to increase the cost of compensation at the expense of Industry, by depriving employers and insurers of their present right to select physicians, surgeons, and hospitals in the discharge of their obligation to furnish medical, surgical and hospital treatment in accordance with the Law.

